

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 715

Petitioner,

vs.

STANFORD HOSPITAL & CLINICS and
LUCILE PACKARD CHILDREN'S
HOSPITAL

Respondents.

Case No: 5:08-CV-00216-JF

[PROPOSED] ORDER GRANTING
STANFORD HOSPITAL AND
CLINICS' AND LUCILE PACKARD
CHILDREN'S HOSPITAL'S MOTION
FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, SUMMARY
ADJUDICATION OF CLAIMS OR
DEFENSES

[FED. RULE OF CIV. P. 56]

Date: August 29, 2008
Time: 9:00 A.M.
Dept: Ctrm. 3, 5th Floor

Judge: Hon. Jeremy Fogel

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 715

Petitioner,

vs.

STANFORD HOSPITAL & CLINICS and
LUCILE PACKARD CHILDREN'S
HOSPITAL

Respondents.

Case No: 5:08-CV-01726-JF

Judge: Hon. Jeremy Fogel

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 715

Petitioner,

vs.

STANFORD HOSPITAL & CLINICS and
LUCILE PACKARD CHILDREN'S
HOSPITAL

Respondents.

Case No: 5:08-CV-01727-JF

Judge: Hon. Jeremy Fogel

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The motion of Respondents Stanford Hospital And Clinics and Lucile Packard Children's Hospital (the "Hospitals") for summary judgment or, in the alternative adjudication of claims or defenses in Case Nos. 5:08-CV-00216 JF (Simien Grievance), 5:08-CV-01726 JF (Satuito Grievance), and 5:08-CV-01727 JF (Andrade Grievance) (collectively, the "Cases") came on regularly for hearing on August 29, 2008, with Eileen R. Ridley of Foley & Lardner, LLP appearing as counsel for the Hospitals and Bruce Harland of Weinberg Roger & Rosenfeld appearing for Petitioner, Service Employees International Union, Local 715 ("Local 715"). After full consideration of the papers in support and in opposition of said motion, the evidence submitted by the parties, the oral argument of counsel and the papers and records in the Cases, and good cause appearing, the Court HEREBY FINDS that there is no triable issue of any material fact and that the Hospitals are entitled to judgment as a matter of law under Rule 56 of the Federal Rules Of Civil Procedure for the reasons stated below.

I. LOCAL 715 HAS CEASED TO EXIST

The Hospitals are not required to arbitrate the grievances at issue in the Cases because Local 715 has ceased to exist.

The Court finds that the following facts are material and undisputed:

- In 1998, the National Labor Relations Board ("NLRB" or the "Board") issued an order (the "Certification") certifying Local 715 as the exclusive collective bargaining representative of a unit of Hospital employees (the "Bargaining Unit") as set forth in the Certification. [Declaration of Laurence R. Arnold In Support of Motions ("Arnold Decl.") Exh. A.]
- Thereafter, the Hospitals and Local 715 engaged in collective bargaining resulting in a series of collective bargaining agreements. The current collective bargaining agreement (the "CBA") became effective on January 20, 2006, and is scheduled to expire on November 4, 2008. [Arnold Decl. Exh. B.]
- Article 1 of The CBA contains a "Recognition Clause" which states that, pursuant to the

1 Board's Certification, the Hospitals recognized Local 715 "as the sole and exclusive
2 representative for the purpose of collective bargaining" with respect to Bargaining Unit
3 employees. [Arnold Decl. Exh. B.]

- 4 • Article 26 of the CBA contains a grievance and arbitration procedure through which
5 alleged violations of the CBA may be challenged. However, only Local 715 may appeal
6 a grievance to arbitration. [Arnold Decl. Exh. B.]
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- 8 • Between February 18 and February 20, 2006, Local 715 entered into a "Servicing
9 Agreement" with Service Employees International Union, United Healthcare Workers –
10 West ("UHW"). [Arnold Decl. ¶ 36 & Exh. CC; Declaration of Scott P. Inciardi In
11 Support of Motions ("Inciardi Decl.") Exh. EE.]
- 12 • The Servicing Agreement provided that UHW would provide certain "professional
13 services" to Local 715 at no cost, including "Representation in the grievance procedure
14 and at arbitration hearings," "Representation at labor-management meetings," and
15 "Assistance to members appearing before the National Labor Relations Board on behalf
16 of the Local 715 Chapter at the Stanford Facility." [Arnold Decl. Exh. CC.]
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- 18 • The Servicing Agreement further provided that, Local 715 and UHW would take such
19 steps as were necessary to enforce the agreement, including initiating proceedings before
20 the NLRB, in the event that the Servicing Agreement was rejected by the Hospitals."
21 [Arnold Decl. Exh. CC.]
- 22 • The Servicing Agreement was to be effective as of March 1, 2006. [Arnold Decl. Exh.
23 CC.]
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- 25 • On February 28, 2006, Greg Pullman, then Local 715's Staff Director, informed Laurie
26 Quintel, the Hospitals' Director of Employee and Labor Relations, that she should work
27 with an employee of UHW named Ella Hereth in connection with the settlement of
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grievances and unfair labor practice charges. [Declaration of Laurie J. Quintel In Support Of Motions (“Quintel Decl.”) ¶ 9.]

- Around the same time, another UHW employee named Rachel Deutsch told Ms. Quintel that UHW would be taking over representation for the Hospitals. [Quintel Decl. ¶ 10.]
- Ms. Quintel sought clarification from Mr. Pullman, whereupon Mr. Pullman told Ms. Quintel that “Local 715 represents the workers covered by our agreement” but that “Local 715 has asked SEIU UHW to service this unit in many ways on a day-to-day basis.” [Quintel Decl. ¶ 11-12 & Exh. B.]
- Between March and May, 2006, the functions that had formerly been carried out by Local 715 personnel were carried out exclusively by UHW employees. UHW employees filed grievances on UHW stationery, some of which referred to Bargaining Unit members as “members” of UHW. [Quintel Decl. ¶ 15 & Exh. D.] Ms. Hereth sent a letter to Ms. Quintel instructing to “direct all SEIU correspondence” to UHW employees at UHW’s San Francisco office. [Quintel Decl. ¶ 14 & Exh. C.] On May 22, 2006, Jocelyn Olick, a UHW employee and purported servicing agent under the Servicing Agreement, stated in an e-mail that “I and Ella Hereth do not work for SEIU 715. SEIU-UHW is doing the representation work here at Stanford Hospital.” [Quintel Decl. ¶ 20 & Exh. H.] On the same day, Mr. Pullman stated in an e-mail that “Jocelyn Olick, Rachel Deutch and Ella Hereth out of the SEIU UHW San Francisco office are handling all representation matters for SEIU Local 715.” [Quintel Decl. ¶ 20 & Exh. H.] Ms. Olick also purported to have authority to accept changes to the CBA. [Quintel Decl. ¶ 21 & Exh. I.]
- On or around March 28, 2006, W. Daniel Boone of the law firm Weinberg Roger & Rosenfeld, which historically represented Local 715, wrote a letter to Laurence R. Arnold, an attorney who represents the Hospitals, which referred to “United Healthcare Workers – West (formerly SEIU, Local 715).” [Arnold Decl. ¶ 26 & Exh. S.]

- 1 • In early April, 2006, UHW employee Phyllis Willett told Ms. Quintel that when the
2 Hospitals remitted union dues, they needed to provide the social security numbers of the
3 relevant employees to help UHW identify them. [Quintel Decl. ¶ 16.]
- 4 • Around April 17, 2006, Ms. Quintel received a letter from William A. Sokol of the
5 Weinberg Firm in which he stated “I am writing on behalf of SEIU United Healthcare
6 Workers West” and requested that the Hospitals provide information pertaining to
7 Bargaining Unit employees, and the dues deducted from their paychecks. [Quintel Decl.
8 ¶ 17 & Exh. E.]
- 9 • In May and June, 2006, Hospitals informed Local 715 that they did not consent to any
10 transfer of bargaining rights from Local 715 to UHW, and that the Hospitals would not
11 deal with employees of UHW. [Quintel Decl. ¶ 19 & Exh. G; Arnold Decl. ¶ 32 & Exh.
12 Z.]
- 13 • In June, 2006, Hospitals requested information from Local 715 regarding the
14 organization’s status and the role of UHW. [Arnold Decl. ¶ 32 & Exh. Z.]
- 15 • On June 9, 2006 the Service Employees International Union (“SEIU” or the
16 “International”) issued a document titled “Hearing Officers’ Joint Report And
17 Recommendations” (the “Joint Report”). The Joint Report outlined a plan to reorganize
18 various SEIU Locals (the “SEIU Reorganization Plan”). The Joint Report noted, “Local
19 715 is the certified representative of employees at Stanford and Lucille (sic) Packard
20 Hospitals” but that “UHW is actually servicing employees in these facilities . . . pursuant
21 to servicing agreements.” [Inciardi Decl. Exh. T p. 16.] The Joint Report concluded that,
22 in order to maximize local union strength, the jurisdiction of various local unions should
23 be changed. With respect to government employee unions, the report recommended the
24 creation of new local unions, that would absorb “a substantial portion” of the membership
25 of existing local unions, including Local 715. [Inciardi Decl. Exh. T p. 40.] The Joint
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Report also recommended that, “the affiliation of private healthcare units represented by Locals 727, 715, and 2028 should be changed to UHW as soon as feasible.” [Inciardi Decl. Exh. T p. 65.]

- On June 11, 2006, Andrew L. Stern, International President of SEIU, issued a memorandum to “Affected SEIU Local Unions in California” announcing that SEIU had decided to adopt the recommendations outlined in the Joint Report. The memorandum confirmed that “Private Sector Hospital units currently represented by Locals 535, 707, 715, 2028, and 4988 will merge into UHW.” [Quintel Decl. ¶ 23 & Exh. K at p. 4.]
- Hospitals received copies of the Servicing Agreement in mid August and reviewed it. [Quintel Decl. ¶ 24-25 & Exh. L; Arnold Decl. ¶ 36-38 & Exh. CC-EE.] The Hospitals concluded, based upon the evidence that Local 715 had abdicated its representative duties and assigned them to UHW, that the Servicing Agreement was invalid and rejected it.
- Local 715 was informed of the Hospitals’ rejection of the Servicing Agreement on or around August 29, 2006, and was further informed that the Hospitals would not deal with employees of UHW acting pursuant to the Servicing Agreement. [Arnold Decl. ¶ 38 & Exh. EE.]
- In September, 2006, Bargaining Unit employees were asked to ratify the reorganization plan adopted by SEIU by means of a state-wide vote. The balloting material distributed to Bargaining Unit employees expressly stated that “Hospital workers at . . . Stanford/Lucille Packard Children’s Hospital . . . will change their affiliation to United Healthcare Workers – West.” [Quintel Decl. ¶ 26-27 & Exh. M-N.]
- On January 2, 2007, International President Stern issued an “Order Of Reorganization” to various SEIU locals, including Local 715. [Inciardi Decl. Exh. U.] President Stern ordered that all workers represented by Local 715, with certain exceptions, be “reorganized into SEIU Local 521.” President Stern further ordered that “all . . .

Stanford/Lucille (sic) Packard Hospital workers be, and are hereby, reorganized into SEIU Local UHW.” [Inciardi Decl. Exh. U.] Such “reorganization” was to take place as soon as practicable.

- On January 31, 2007, Chief Shop Steward Robert W. Rutledge, stated in an e-mail that, “SEIU 715 no longer exists and a service agreement between the former 715 and UHW has been in place since March first of 2006.” [Quintel Decl. ¶ 28 & Exh. O.] Copies of the e-mail were sent to Ms. Olick and UHW employee Kim Tavaglione, neither of whom objected to Mr. Rutledge’s statement.
- At a meeting with Ms. Quintel on or around February 2, 2007, Mr. Rutledge repeated his assertion that Local 715 no longer existed. He also stated that Local 715 no longer represented employees at the Hospitals, and that they were now represented by UHW. [Quintel Decl. ¶ 29.]
- In late January, Local 715 prominently posted a statement on its website, located at <http://www.SEIU715.org>, that “We are in the process of transitioning to our new local 521. This web site will be taken down on Feb. 28. On March 1, our new Local’s web site www.seiu521.org will have your chapter pages and other information.” [Quintel Decl. ¶ 30 & Exh. P.]
- Beginning on or around March 1, visitors to Local 715’s website could no longer access the former site, but were automatically redirected to the website of Service Employees International Union, Local 521 (“Local 521”), located at <http://www.SEIU521.org>. Local 521’s website contained a prominent statement that five local unions, including Local 715 “have come together . . . by forming one larger, more powerful local.” [Quintel Decl. ¶ 32 & Exh. R.] Another page referenced benefits available to “former SEIU Local 715 members.” [Quintel Decl. ¶ 32 & Exh. R.]
- On or around March 5, 2007, Local 715’s website contained the following statement:

1 “Five locals (415, 535, 700, 715, and 817) have come together to cover the North Central
2 region by forming one larger, more powerful local. On January 2, 2007, our new local
3 received its charter. On March 1, 2007, the resources of all five locals were transferred to
4 Local 521.” [Quintel Decl. ¶ 40 & Exh. X.]

- 5 • As of March 2, 2007, UHW’s website, located at <http://SEIU-UHW.org>, contained an
6 assertion that UHW represented the Hospitals’ employees. [Quintel Decl. ¶ 34 & Exh.
7 S.] UHW has continued to claim to represent the Hospitals’ employees on its website.
8 [Inciardi Decl. ¶ 24 & 29-30 & Exh. C21-C22.]
- 9 • The dues deduction authorization forms, by which the individual bargaining unit
10 members authorized deduction and remittance of union dues, authorized remittance of
11 dues specifically to Local 715, and to no other organization. [Quintel Decl. ¶ 35 & Exh.
12 T.]
- 13 • In fact, although it was not known to the Hospitals at the time, the actual recipient of the
14 dues being remitted to “Local 715” was Local 521. A document posted on the Local 521
15 Website titled “Dues Receipts of the year of 2007” showed that, in September, 2007,
16 Local 521 received a payment of dues totaling \$21,949 from an account designated
17 “USW Hospitals” (“USW” being a commonly used acronym for “United Stanford
18 Workers,” the name given to the chapter of Local 715 that had been assigned to the
19 SHC/LPCH Bargaining Unit). [Arnold Decl. ¶ 57 & Exh. WW.] This was the exact
20 amount (rounded to the dollar) of the Hospitals’ last dues remittance to “Local 715” for
21 February, 2007, which was \$21,949.35. [Quintel Decl. ¶ 38 & Exh. V.]
- 22 • On March 2, 2007, the Hospitals informed “Local 715” that, after the remittance of the
23 dues for February, 2007, the Hospitals would no longer remit dues to “Local 715” absent
24 clarification of its status and the identity of the organization that would be receiving the
25 dues. [Quintel Decl. ¶ 36 & Exh. U.] The requested information was not provided, and
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1 after March 1, 2007, the Hospitals ceased remitting dues. [Quintel Decl. ¶ 37.] The
 2 Hospitals continued to deduct dues from Bargaining Unit employees' checks, but held the
 3 dues in a separate bank account established for that purpose, a procedure that continues to
 4 date. [Quintel Decl. ¶ 37.]

- 5 • On June 8, 2007, President Stern issued an "Order Of Emergency Trusteeship." [Inciardi
 6 Decl. Exh. Z.] That order stated that, because of the Hospitals' "position" that Local 715
 7 had ceased to exist, and the transfer of the bulk of Local 715's former members and
 8 resources to Local 521, SEIU was placing "Local 715" under trusteeship, removing its
 9 officers, and appointing Bruce W. ("Rusty") Smith as trustee. The order confirmed that
 10 the SEIU's reorganization plan remained in place and that the remaining members of
 11 "Local 715" would be "united with other SEIU healthcare members in SEIU United
 12 Healthcare Workers – West." [Inciardi Decl. Exh. Z.]
- 13 • Mr. Smith sent a letter to Ms. Quintel on June 14, 2007 informing her of the trusteeship,
 14 that the Servicing Agreement would "remain in full force and effect," and that UHW
 15 employees would continue to "service" the Hospitals. [Quintel Decl. ¶ 48 & Exh. FF.]
- 16 • Around June 18, 2007, Mr. Arnold learned that Barbara J. Chisholm of the law firm
 17 Altshuler Berzon LLP (the "Altshuler Firm") was now representing "Local 715." Mr.
 18 Arnold confirmed this in a conversation with Ms. Chisholm followed by a confirming
 19 letter. [Arnold Decl. ¶ 40 & Exh. FF.]
- 20 • To date, the Hospitals have not received any notification that the Altshuler Firm no
 21 longer represents "Local 715." [Quintel Decl. ¶ 57; Arnold Decl. ¶ 40.]
- 22 • Since the announcement of the Altshuler Firm's representation of "Local 715," the
 23 Hospitals continued to receive correspondence from Weinberg Firm attorneys purporting
 24 to act on "Local 715's" behalf in grievance and arbitration matters. [Arnold Decl. ¶ 49,
 25 55 & 65 & Exh. UU & EEE.] Weinberg Firm attorneys also appeared in each arbitration
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1 hearing that was held after the appointment of the Altshuler Firm as counsel. [Arnold
2 Decl. ¶ 46 & 49 & Exh. LL.]

3 • The Hospitals were aware that the Weinberg Firm has historically acted as counsel to
4 UHW and it had previously sent correspondence to the Hospitals representing UHW
5 pursuant to the Servicing Agreement.[Quintel Decl. ¶ 17 & Exh. E.] The Hospitals
6 became concerned that when the Weinberg Firm acted on behalf of “Local 715,” it was
7 actually retained by UHW and acting under authority of the rejected Servicing
8 Agreement. However, when the Hospitals requested information from “Local 715” on
9 this issue “Local 715” and its purported attorneys either failed to respond or openly
10 refused to respond. [Arnold Decl. ¶ 49-53 & Exh. NN-RR.] The Hospitals concluded
11 that the Weinberg Firm was, in fact, representing UHW, and that its appearances on
12 “Local 715’s” behalf were made under authority of the rejected Servicing Agreement.
13 Therefore, the Hospitals refused to participate in arbitration proceedings with Weinberg
14 attorneys absent assurances that the appearance was made directly on behalf of “Local
15 715” and not pursuant to the Servicing Agreement. [Arnold Decl. ¶ 53 & Exh. RR.]
16 Neither the Weinberg Firm nor the Altshuler Firm provided the Hospitals with the
17 requested assurance.
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19 The undisputed facts set forth above demonstrate that on or around March 1, 2007, Local
20 715 was dissolved and that it no longer exists. It is well-established that, where the NLRB
21 certifies a union as the exclusive bargaining representative of an employer’s workers pursuant to
22 the NLRA, the employer is not only obligated to bargain with that union, but is prohibited from
23 bargaining with any other union. *Medo Photo Supply Corporation v. National Labor Relations*
24 *Board*, 321 U.S. 678, 673-674 (1944); *Nevada Security Innovations, Ltd.*, 341 NLRB 953, 955
25 (2004). Where the certified union has ceased to exist, the employer’s bargaining obligation is at
26 an end. *Brooks v. National Labor Relations Board*, 348 U.S. 96, 98 (1954); *Pioneer Inn*
27 *Associates v. National Labor Relations Board*, 578 F.2d 835, 839 (9th Cir. 1978).
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Likewise, where an employer and the certified union negotiate a collective bargaining agreement providing for arbitration of disputes, and the union subsequently ceases to exist, the employer no longer has any obligation to arbitrate because only the union has standing to compel arbitration. *Moruzzi v. Dynamics Corporation Of America*, 443 F.Supp. 332, 336-337 (S.D.N.Y. 1977); *Lorber Industries Of California v. Los Angles Printworks Corporation*, 803 F.2d 523, 525 (9th Cir. 1986) (The obligation to arbitrate “may not be invoked by one who is not a party to the agreement”). Where the certified union has ceased to exist, its former officials or representatives do not have standing to compel arbitration under its name. *Moruzzi, supra*, 443 F.Supp. at 337.

Because Local 715 has ceased to exist, it lacks standing to compel arbitration with respect to the three (3) grievances at issue in the Cases, and the Hospitals are not obligated to arbitrate with “Local 715” it over any of those grievances.

Therefore Judgment shall be entered against Local 715 and in favor of the Hospitals in the Cases and each of the Cases shall be DISMISSED WITH PREJUDICE.

II. THE HOSPITALS ARE NOT OBLIGATED TO ARBITRATE WITH UHW OR ITS REPRESENTATIVES

Whether or not Local 715 continues to exist, the Hospitals are not obligated to arbitrate with UHW or UHW’s representatives acting pursuant to the Servicing Agreement because the Servicing Agreement is invalid.

The Court finds that the following facts are material and undisputed:

- In 1998, the National Labor Relations Board (“NLRB” or the “Board”) issued an order (the “Certification”) certifying Local 715 as the exclusive collective bargaining representative of a unit of Hospital employees (the “Bargaining Unit”) as set forth in the Certification. [Arnold Decl. Exh. A.]
- Thereafter, the Hospitals and Local 715 engaged in collective bargaining resulting in a series of collective bargaining agreements. The current collective bargaining agreement (the “CBA”) became effective on January 20, 2006, and is scheduled to expire on November 4, 2008. [Arnold Decl. Exh. B.]

- 1 • Article 1 of The CBA contains a “Recognition Clause” which states that, pursuant to the
2 Board’s Certification, the Hospitals recognized Local 715 “as the sole and exclusive
3 representative for the purpose of collective bargaining” with respect to Bargaining Unit
4 employees. [Arnold Decl. Exh. B.]
- 5 • Article 26 of the CBA contains a grievance and arbitration procedure through which
6 alleged violations of the CBA may be challenged. However, only Local 715 may appeal
7 a grievance to arbitration. [Arnold Decl. Exh. B.]
- 8 • Between February 18 and February 20, 2006, Local 715 entered into a “Servicing
9 Agreement” with Service Employees International Union, United Healthcare Workers –
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12 services” to Local 715 at no cost, including “Representation in the grievance procedure
13 and at arbitration hearings,” “Representation at labor-management meetings,” and
14 “Assistance to members appearing before the National Labor Relations Board on behalf
15 of the Local 715 Chapter at the Stanford Facility.” [Arnold Decl. Exh. CC.]
- 16 • The Servicing Agreement further provided that, Local 715 and UHW would take such
17 steps as were necessary to enforce the agreement, including initiating proceedings before
18 the NLRB, in the event that the Servicing Agreement was rejected by the Hospitals.”
19 [Arnold Decl. Exh. CC.]
- 20 • The Servicing Agreement was to be effective as of March 1, 2006. [Arnold Decl. Exh.
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- 22 • On February 28, 2006, Greg Pullman, then Local 715’s Staff Director, informed Laurie
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24 with an employee of UHW named Ella Hereth in connection with the settlement of
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1 grievances and unfair labor practice charges. [Quintel Decl. ¶ 9.]

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3 that UHW would be taking over representation for the Hospitals. [Quintel Decl. ¶ 10.]
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5 Quintel that “Local 715 represents the workers covered by our agreement” but that
6 “Local 715 has asked SEIU UHW to service this unit in many ways on a day-to-day
7 basis.” [Quintel Decl. ¶ 11-12 & Exh. B.]
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10 grievances on UHW stationery, some of which referred to Bargaining Unit members as
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13 San Francisco office. [Quintel Decl. ¶ 14 & Exh. C.] On May 22, 2006, Jocelyn Olick, a
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16 representation work here at Stanford Hospital.” [Quintel Decl. ¶ 20 & Exh. H.] On the
17 same day, Mr. Pullman stated in an e-mail that “Jocelyn Olick, Rachel Deutch and Ella
18 Hereth out of the SEIU UHW San Francisco office are handling all representation matters
19 for SEIU Local 715.” [Quintel Decl. ¶ 20 & Exh. H.] Ms. Olick also purported to have
20 authority to accept changes to the CBA. [Quintel Decl. ¶ 21 & Exh. I.]
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Hospitals remitted union dues, they needed to provide the social security numbers of the relevant employees to help UHW identify them. [Quintel Decl. ¶ 16.]

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- In mid-August, the Hospitals received copies of the Servicing Agreement in mid August and reviewed it. [Quintel Decl. ¶ 24-25 & Exh. L; Arnold Decl. ¶ 36-38 & Exh. CC-EE.] The Hospitals concluded, based upon the evidence that Local 715 had abdicated its representative duties and assigned them to UHW, that the Servicing Agreement was invalid and rejected it.
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- At a meeting with Ms. Quintel on or around February 2, 2007, Mr. Rutledge repeated his assertion that Local 715 no longer existed. He also stated that Local 715 no longer represented employees at the Hospitals, and that they were now represented by UHW. [Quintel Decl. ¶ 29.]
- In late January, Local 715 prominently posted a statement on its website, located at <http://www.SEIU715.org>, that “We are in the process of transitioning to our new local 521. This web site will be taken down on Feb. 28. On March 1, our new Local’s web site www.seiu521.org will have your chapter pages and other information.” [Quintel Decl. ¶ 30 & Exh. P.]
- Beginning on or around March 1, visitors to Local 715’s website could no longer access the former site, but were automatically redirected to the website of Service Employees International Union, Local 521 (“Local 521”), located at <http://www.SEIU521.org>. Local 521’s website contained a prominent statement that five local unions, including Local 715 “have come together . . . by forming one larger, more powerful local.” [Quintel Decl. ¶ 32 & Exh. R.] Another page referenced benefits available to “former SEIU Local 715 members.” [Quintel Decl. ¶ 32 & Exh. R.]
- On or around March 5, 2007, Local 715’s website contained the following statement:

1 “Five locals (415, 535, 700, 715, and 817) have come together to cover the North Central
2 region by forming one larger, more powerful local. On January 2, 2007, our new local
3 received its charter. On March 1, 2007, the resources of all five locals were transferred to
4 Local 521.” [Quintel Decl. ¶ 40 & Exh. X.]

- 5 • As of March 2, 2007, UHW’s website, located at <http://SEIU-UHW.org>, contained an
6 assertion that UHW represented the Hospitals’ employees. [Quintel Decl. ¶ 34 & Exh.
7 S.] UHW has continued to claim to represent the Hospitals’ employees on its website.
8 [Inciardi Decl. ¶ 24 & 29-30 & Exh. C21-C22.]
- 9 • The dues deduction authorization forms, by which the individual bargaining unit
10 members authorized deduction and remittance of union dues, authorized remittance of
11 dues specifically to Local 715, and to no other organization. [Quintel Decl. ¶ 35 & Exh.
12 T.]
- 13 • In fact, although it was not known to the Hospitals at the time, the actual recipient of the
14 dues being remitted to “Local 715” was Local 521. A document posted on the Local 521
15 Website titled “Dues Receipts of the year of 2007” showed that, in September, 2007,
16 Local 521 received a payment of dues totaling \$21,949 from an account designated
17 “USW Hospitals” (“USW” being a commonly used acronym for “United Stanford
18 Workers,” the name given to the chapter of Local 715 that had been assigned to the
19 SHC/LPCH Bargaining Unit). [Arnold Decl. ¶ 57 & Exh. WW.] This was the exact
20 amount (rounded to the dollar) of the Hospitals’ last dues remittance to “Local 715” for
21 February, 2007, which was \$21,949.35. [Quintel Decl. ¶ 38 & Exh. V.]
- 22 • On March 2, 2007, the Hospitals informed “Local 715” that, after the remittance of the
23 dues for February, 2007, the Hospitals would no longer remit dues to “Local 715” absent
24 clarification of its status and the identity of the organization that would be receiving the
25 dues. [Quintel Decl. ¶ 36 & Exh. U.] The requested information was not provided, and
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1 after March 1, 2007, the Hospitals ceased remitting dues. [Quintel Decl. ¶ 37.] The
 2 Hospitals continued to deduct dues from Bargaining Unit employees' checks, but held the
 3 dues in a separate bank account established for that purpose, a procedure that continues to
 4 date. [Quintel Decl. ¶ 37.]

- 5 • On June 8, 2007, President Stern issued an "Order Of Emergency Trusteeship." [Inciardi
 6 Decl. Exh. Z.] That order stated that, because of the Hospitals' "position" that Local 715
 7 had ceased to exist, and the transfer of the bulk of Local 715's former members and
 8 resources to Local 521, SEIU was placing "Local 715" under trusteeship, removing its
 9 officers, and appointing Bruce W. ("Rusty") Smith as trustee. The order confirmed that
 10 the SEIU's reorganization plan remained in place and that the remaining members of
 11 "Local 715" would be "united with other SEIU healthcare members in SEIU United
 12 Healthcare Workers – West." [Inciardi Decl. Exh. Z.]
- 13 • Mr. Smith sent a letter to Ms. Quintel on June 14, 2007 informing her of the trusteeship,
 14 that the Servicing Agreement would "remain in full force and effect," and that UHW
 15 employees would continue to "service" the Hospitals. [Quintel Decl. ¶ 48 & Exh. FF.]
- 16 • Around June 18, 2007, Mr. Arnold learned that Barbara J. Chisholm of the law firm
 17 Altshuler Berzon LLP (the "Altshuler Firm") was now representing "Local 715." Mr.
 18 Arnold confirmed this in a conversation with Ms. Chisholm followed by a confirming
 19 letter. [Arnold Decl. ¶ 40 & Exh. FF.]
- 20 • To date, the Hospitals have not received any notification that the Altshuler Firm no
 21 longer represents "Local 715." [Quintel Decl. ¶ 57; Arnold Decl. ¶ 40.]
- 22 • Since the announcement of the Altshuler Firm's representation of "Local 715," the
 23 Hospitals continued to receive correspondence from Weinberg Firm attorneys purporting
 24 to act on "Local 715's" behalf in grievance and arbitration matters. [Arnold Decl. ¶ 49,
 25 55 & 65 & Exh. UU & EEE.] Weinberg Firm attorneys also appeared in each arbitration
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1 hearing that was held after the appointment of the Altshuler Firm as counsel. [Arnold
2 Decl. ¶ 46 & 49 & Exh. LL.]

- 3 • Hospitals were aware that the Weinberg Firm has historically acted as counsel to UHW
4 and it had previously sent correspondence to the Hospitals representing UHW pursuant to
5 the Servicing Agreement.[Quintel Decl. ¶ 17 & Exh. E.] The Hospitals became
6 concerned that when the Weinberg Firm acted on behalf of “Local 715,” it was actually
7 retained by UHW and acting under authority of the rejected Servicing Agreement.
8 However, when the Hospitals requested information from “Local 715” on this issue
9 “Local 715” and its purported attorneys either failed to respond or openly refused to
10 respond. [Arnold Decl. ¶ 49-53 & Exh. NN-RR.] The Hospitals concluded that the
11 Weinberg Firm was, in fact, representing UHW, and that its appearances on “Local
12 715’s” behalf were made under authority of the rejected Servicing Agreement.
13 Therefore, the Hospitals refused to participate in arbitration proceedings with Weinberg
14 attorneys absent assurances that the appearance was made directly on behalf of “Local
15 715” and not pursuant to the Servicing Agreement. [Arnold Decl. ¶ 53 & Exh. RR.]
16 Neither the Weinberg Firm nor the Altshuler Firm provided the Hospitals with the
17 requested assurance.
18

19 It has been recognized that, under the National Labor Relations Act, one union may use
20 agents or experts from another union to act on its behalf in formal labor negotiations. *Goad*
21 *Company*, 333 NLRB 677, 679 (2001). However, a union may not use the purported
22 appointment of agents to effectuate a *de facto* change of the bargaining representative, and under
23 such circumstances, the employer is under no obligation to deal with the purported agents.
24 *Goad, supra*, 333 NLRB at 680 (employer not obligated to deal with purported agent where
25 certified union “did not simply enlist the aid of an agent . . . it transferred its representational
26 duties and responsibilities.”) See also *Sherwood Ford, Inc*, 188 NLRB 131, 133-134 (1971)
27 (Board disregarded agency agreement between unions as “a device, subterfuge, or stratagem”
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1 designed to accomplish a *de facto* change of the bargaining agent.).

2 The undisputed facts set forth above demonstrate that, notwithstanding the content of the
3 Servicing Agreement, in practice, “Local 715” and UHW have used the Servicing Agreement as
4 a “device, subterfuge, or stratagem” to, in effect, transfer representative status to UHW. Rather
5 than serving as a mere agent, as called for in the Servicing Agreement, UHW has sought to
6 completely supplant Local 715 with respect to every aspect of collective bargaining, leaving
7 Local 715 as the representative in name only. Given this, the Hospitals are not obligated to
8 arbitrate or otherwise deal with employees and representatives of UHW, including Weinberg
9 Firm attorneys, acting pursuant to the invalid Servicing Agreement. Thus, as a matter of law,
10 judgment shall be entered in the favor of the Hospitals and each of the Cases shall be dismissed
11 with prejudice.

12
13 **IT IS ORDERED**, for the foregoing reasons, that the Hospitals’ motion for summary
14 judgment or, in the alternative, summary adjudication of claims or defenses in Case Nos. 5:08-
15 CV-00216 JF, 5:08-CV-01726 JF, and 5:08-CV-01727 JF is **GRANTED** and that judgment will
16 be entered against Local 715 and in favor of the Hospitals in each of the Cases. Further, **IT IS**
17 **ORDERED** that each of the CASES shall be DISMISSED with prejudice.

18 Dated:

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21 By: _____
22 HON. JEREMY FOGEL
23 JUDGE OF THE UNITED STATES
24 DISTRICT COURT FOR THE NORTHERN
25 DISTRICT OF CALIFORNIA
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